No. 06-712

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM H WYTTENBACH (a trust);
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent

PETITION FOR REHEARING

William H Wyttenbach, Trustee
WILLIAM H WYTTENBACH (a trust)
c/o 2000 South McColl Road, B 173
McAllen, Texas 78503
956-342-6188

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING

Petitioner, WILLIAM H WYTTENBACH (a trust), respectfully petitions this court for a rehearing.

STATEMENT OF THE CASE

Internal Revenue Service (hereinafter "Respondent") issued a bogus Notice of Determination (hereinafter "NOD"), based upon bogus Notices of Deficiency, specifically addressing them only to Petitioner. To contest said bogus NOD Petitioner, through its fiduciary (U.S. Tax Court Rule 24 (b), filed suit in tax court. Contrary to the material facts of the case, Respondent alleged Petitioner was not the person named on said NOD, the tax court accepted Respondent's bogus allegation and summarily dismissed the case without trial incorrectly alleging the wrong party filed the case. Hard evidence is available that proves Petitioner is the same party that was named on said NOD. Petitioner timely appealed the Tax Court's ruling to the 5th Circuit Court of Appeals, showing: the tax court's error. The facts of the case prove Respondent's allegation is false. The appeals court accordingly dismissed the appeal for alleging lack of jurisdiction and improper party. Petitioner petitioned this court for a writ of certiorari, which was denied.

CAUSES FOR GRANTING THIS PETITION FOR REHEARING

The supervisory authority of this court is an attribute of justice necessarily required to secure justice in the lower courts *Hovey v. Elliott*. Thus, at the debt of justice, this court should grant this Petition for the following causes:

Cause 1: This court erred in failing to grant a de novo review of the tax court's summary dismissal of the underlying action

Appellate review of summary dismissals requires a de novo review (*East Wind Indus. v. United States*, 196 F.3d 499

(1999)); such a review needs to be done according to the Standard for Review this court has set, which is as follows:

1. "*Especially when considering a Summary Judgment Motion, a plaintiff's case must be heard in the light most favorable to plaintiff*" *Cruz v. Beto*, 405 U.S. 319,322 (1972); *Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994).
2. "*In reviewing on certiorari a decision granting a motion to dismiss, the United States Supreme Court must accept as true all the factual allegations in the complaint.*" *Leatherman v. Tarrant County Narcotics Intelligence*, 507 U.S. 163;
3. "[the] *Complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim for relief*"; *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957);

Said Standard for Review only allows summary dismissal if it appears beyond doubt that Petitioner can prove no set of facts in support of its claim; however, Petitioner can easily prove all of its claims.

The simplest claim of all to prove is that said bogus NOD was issued specifically to Petitioner and to no other person.

Said NOD is a matter of record; therefore, it speaks for itself and shows Petitioner is the only party addressed on it.

In a trial of the facts, Petitioner would have summoned Social Security Administration's record, which clearly shows Petitioner is a trust and is the only person with the name and Taxpayer Identification Number (hereinafter "TIN") shown on said NOD;

Wherefore, the court is either required to accept the facts as Petitioner presented them as true, which means they must remand the case for trial, or the court must provide Petitioner with the opportunity to prove said NOD was addressed only to it, which can easily be done by summoning Social Security Administration's records; anything less denies justice to Petitioner and mocks justice by not supporting this court's own rules, not the least of which is its Standard for Review;

This court can see this simple fact from the record before it regarding the trial court, if it will only look at this Petition.

Thus, the debt of justice cries forth from these proceedings and demands this court exercise its supervisory power, follow its own rules and grant this request for a rehearing so that justice may be served, this case may be heard and the trial of the facts will allow justice to be satisfied.

Wherefore, this court should reverse its error and grant a rehearing.

Cause 2: This court's denial of a writ of certiorari violates the Constitution's security of the rights of due process of law and access to the courts

What is the point of having a Supreme Court that sets a Standard for Review if this court will not compel the lower courts to follow it?

What is the point of having a Constitutional requirement that compels courts to follow due process of law if this court will not compel the lower courts to follow it?

In fact, what is the point of having a Supreme Court if it refuses to exercise its supervisory power to compel the lower courts to follow the law at the debt of justice?

The standard of review in part states, "[the] *Complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim for relief*"; *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957);

Congress and the Social Security Administration have published, 'the name and TIN combination were created to uniquely identify a specific taxpayer.'

In spite of Respondent's unsupportable false allegation that Petitioner was not the person named on said NOD, which the tax court based its errant summary dismissal on, anyone (including this court) can see, the document (NOD) speaks for itself showing only one specific name and TIN combination; thus, it uniquely shows who it was addressed to. That name and TIN combination uniquely identify Petitioner.

With no further evidence, the record itself proves this. The only question then is, 'Who is the actual person so

named and numbered?' A summons of Social Security Administration's records proves that as well.

Thus this court, from the evidence alone can see for itself that a trial of the facts can easily either prove Petitioner is the correct party to bring this suit or not.

The Standard for Review requires that Petitioner is given that opportunity; anything less denies the constitutionally secured right to due process of law and is a mockery of justice.

Whereas, said NOD and all other documents in the case speak for themselves, along with the material facts of the case, and demonstrate said NOD was issued only to Petitioner; and,

Whereas, this whole issue could be easily resolved with one summons of Social Security Administration's records, which prove the identity of the person named in said NOD; and,

Whereas, Respondent did not offer any evidence to support its spurious allegation;

Therefore, this court's error in denying a writ of certiorari further deprived Petitioner of its constitutionally secured rights of access to the courts and due process of law.

Cause 3: In the face of the Causes shown above, denying petitioner a writ of certiorari, denies Petitioner our Constitutionally secured right to have our case which has never been heard by any Court in the United States, to be heard by a competent Court. As such, minimally our case should be heard by the highest Court of this Nation.

Whereas, no evidence exists to support Respondent's spurious allegation regarding the party to whom the NOD was addressed;

Whereas, the identity of the party addressed on the NOD in question is uniquely clarified by the name and TIN combination, which can be easily proven with a simple summons of the record from Social Security Administration; which is a matter for a trial of the facts;

Whereas, the Standard for Review denies the possibility of a summary dismissal when a controversy of such a factual question is elementary to a case before a trial court;

Whereas; in the face of the overwhelmingly obvious fact that the case was dismissed from the trial court by way of a summary dismissal, which requires a review de novo and the rules of the trial court, and where there is plain and obvious ability in Petitioner to prove the facts of the case or not, which by rule of the Supreme Court bars summary dismissal; still the courts (tax, appeal and Supreme) each denied access for no reasonable or apparent lawful cause;

Therefore, we are left to wonder why the courts are denying our case from being fairly heard in a trial of facts.

Therefore, this court should correct its error and demonstrate that this court is operated not by prejudice but at the debt of justice in support of: the Constitution, the rules of court and the necessities of due process of law; accordingly this court should grant this Petition for a rehearing and issue the Writ of Certiorari.

CONCLUSION

Wherefore, in consideration at least of the causes shown above and at the debt of justice this court should reverse its error and uphold the Constitution, the rules of the tax court, the Standard for Review of summary dismissal cases and its past rules by granting a rehearing in this case and issue the Writ of Certiorari.

Therefore, in consideration of the causes shown above in this petition, Petitioner now formally requests this court to grant this petition for rehearing at the debt of justice.

Respectfully submitted, William H Wyttenbach, TTEE

WILLIAM H WYTTENBACH (a trust)
2000 South McColl Road B 173
McAllen, Texas 78503
(956) 342-6188

CERTIFICATION

This Petition for Rehearing is restricted to the grounds specified in Rule 44, paragraph 2 of the Rules of the Supreme Court of the United States.

This Petition for Rehearing is presented in good faith and not for delay.

William H Wyttenbach, TTEE

WILLIAM H WYTTENBACH (a trust)
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McAllen, Texas 78503
(956) 342-6188

No. 06-712

WILLIAM H WYTTENBACH (a trust)-Petitioner

Vs

COMMISSIONER INTERNAL REVENUE-Respondent

PROOF OF SERVICE

I, William H Wyttenbach, Trustee, do swear or declare that on this date, January 30th 2007, as required by the U.S. Supreme Court Rule 29, that I have served the enclosed PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid, or by delivery to a third party commercial carrier for delivery within 3 calendar days.
The names and addresses of those served are as follows:

Solicitor General of the United States, Room 5614,
Department of Justice,
950 Pennsylvania Avenue, N.W.,
Washington, D.C. 20530-0001

United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.,
Washington, D.C. 20530-0001

Eileen J. O'Connor
Assistant Attorney General, Tax Division
U.S. Department of Justice
Post Office Box 502

Washington, D.C. 20044

Donald L. Korb
Chief Counsel
Internal Revenue Service
111 Constitution Avenue, N.W.,
Washington, D.C. 20224

We declare under penalty of perjury that the foregoing is true and correct.

Executed on January, 30th, 2007

William H Wyttenbach, TEE
WILLIAM H WYTTENBACH (a trust)
2000 South McColl Road, B 173
McAllen, Texas 78503